MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

UPP4722 – PROFESSIONAL PRACTICE II

(All Sections / Groups)

26th APRIL 2022
Reading Time: 09.00 a.m. – 09.15 a.m.
(15 Minutes)
Answering Time: 09.15 a.m. – 12.15 noon.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 6 pages with 5 Questions only.

3. This paper consists of two parts. **PART A is COMPULSORY**. **PART B to attempt either question 4A or 4B**. The distribution of the marks for each question is given.

4. Students are only allowed to bring in a CLEAN and ORIGINAL COPY of the following statutes into the exam venue:

   (a) Probate and Administration Act 1959
   (b) Wills Act 1959
   (c) Distribution Act 1958
   (d) Small Estate (Distribution) Act 1955
   (e) Public Trust Corporation Act
   (f) Rules of Court 2012
   (g) Civil Law Act 1956
   (h) Contracts Act 1950
   (i) Court of Judicature Act 1964
   (j) Limitation Act 1953
   (k) Road Transport Act 1987

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY

QUESTION 1

Serene Kiara Development Sdn Bhd ('the Company') is in the business of hotel operation and decided to enter into a Tenancy Agreement on 14.02.2018 ('the Tenancy Agreement') with one Carol Ong. Carol Ong is the owner of Bangsawan Suite, No. 8, Singgahsana Square, 8000, Mont Kiara ('the said Unit'). Based on the Tenancy Agreement, the Company agreed to pay monthly rental of RM8,000.00 to Carol Ong for 5 years with an option to renew the contract thereafter.

Unfortunately, the hotel operation business has been badly affected by the pandemic and the Company could no longer afford to remit monthly rental payment to Carol Ong since April 2020. This is due to the Movement of Control Order imposed by the Government of Malaysia. The Company is also facing difficulties to generate income as there are not many tourists interested to stay at the said Unit in view of safety issues and travelling restrictions.

Despite numerous reminders issued by Carol Ong, the Company has still failed, refused and/or neglected to pay the outstanding monthly rental payment. As a result, Carol Ong issued a letter of demand dated 01.12.2020 against the Company to claim for outstanding rental payment of RM72,000.00. The Company was given seven (7) days to revert to the said letter of demand but as to date the Company has not replied to the said letter of demand. The Company has no means to pay of the outstanding amount for the time being and worried that Carol Ong will file a suit against the Company.

The Company appointed your good office, Messrs Luther & Co to represent them and to advise them accordingly. The Head of Legal Department of the Company, Ms. Vanya Hargreeves had contacted you and thereafter sent the following email to your good office on 20.12.2020: -

"*Dear Sir/Madam,*

We refer to the above matter and to our telephone conversation a short while ago.

As spoken, we would appreciate if you could peruse the documents forwarded to you earlier and revert to us on the legal position of the following issues: -

(a) Whether we can invoke Clause 12 of the Tenancy Agreement to delay the payment of rental until February 2021? Please render your advice pursuant to Section 5, Section 7 and Section 10 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Act 829);

(b) Whether we should reply to the letter of demand dated 01.12.2020; and

…continued

(c) We would like to explore negotiation or mediation to resolve the matter amicably. Please advise on the process and strategy that should be considered by the Company.

For your ease of reference, we reproduce hereinbelow Clause 12 of the Tenancy Agreement

12. Force Majeure and Other Disabilities

The tenant shall not be liable to the landlord to fulfil any terms of this Agreement if such fulfillment is delayed, hindered or prevented by force majeure including but not limited to flood, fire, act of God, act of war or any other circumstances of whatsoever nature that is beyond the control of the parties in the Agreement

We look forward to your reply.

Yours faithfully,
Ms. Charlotte Hargreeves

Please write a legal opinion in the form of a letter to advise your client, in reference to Act 829 and relevant cases. Assumption of reasonable facts is permitted.

(Total: 25 marks)

QUESTION 2

On 1st January 2020, Mahmud, 61 years old was on his way to court together with a client, Mamat, a 22-year-old unmarried man who was suspected of committing theft while they were involved in an accident when Mahmud's car bearing registration no. MAH123 collided into the back of a bus driven by John Atkin, bearing registration no. MAU456.

The collision was said to be caused due to the sudden stop made by John Atkin without warning. However, John Atkin claimed that the bus did not stop suddenly but had instead slowed down before stopping and had in fact stopped and remained stationary for a few minutes before the accident occurred. Mamat's family claimed that John was wholly responsible for the accident on the ground that he stopped the bus suddenly without warning. However, John Atkin claimed that Mahmud contributed towards the accident for not keeping a safe distance from the bus.

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In that collision, both Mahmud and Mamat were thrown from the car with Mahmud suffering the more serious injuries and died after 15 days of the accident while Mamat suffered severe brain damage described as acute subdural haemorrhage on the left side of the brain with midline shift of 1.5 cm and punctuate haemorrhages around the brain stem. The said injuries were of such severity that the aftermath of the collision caused Mamat to be in a vegetative state. In addition to the injuries to his brain, Mamat also suffered a 3 cm laceration wound over the right brow, a 2 cm laceration wound over his scrotum and a distal radius bone fracture.

Mahmud was a senior lawyer who works for Rajoo & Partners and was earning a salary of RM15,000.00 per month. Mahmud left behind a wife, Maria who is unemployed and 2 children aged 10 and 12 and an adopted daughter aged 15. During his life, Mahmud gives Maria RM1,000.00 per month for household expenses RM1500.00 for her personal needs. After Mahmud's death, Maria plans to engage an Indonesian maid to look after their children, so that she can find job. The monthly salary of the maid is RM1000.00 per month.

Mamat was brought to Pantai Hospital, Ayer Keroh and received treatment there until he discharged. Mamat claims that he earns RM3,000 per month but John Atkin argued that Mamat's earning came from proceed of crime committed by him, ie theft. The hospital bills for those 3 months treatment and hospitalization were RM125,000.00. Both his parents visited him on daily basis and the cost of the transportation was RM50.00 per trip. His mother, Salmah took 2 months unpaid leave and later quitted her job to take care of Mamat. Her last salary as a clerk was RM3,000.00.

After 3 months, Mamat was discharged from Pantai Hospital. However, Mamat's doctor, Dr. Lim said that it is difficult to predict Mamat's life expectancy, but his injuries would not shorten his life and he might have another 35-40 years more to live. Mamat could be expected to be looked after by his parents who were 48 years old (mother) and 47 years old (father) respectively, and by which time his parents would not be able to care for him so he would need to be cared for "by the likes of a domestic help or a good nursing home". He also suggests Mamat to be treated by a Chinese physician as an alternative to the conventional physiotherapy.

Your firm, Messrs JM William & Co. has been instructed by Jitu Janji Sdn Bhd, the insurance company for John Atkin's vehicle to draft a letter of opinion regarding the claim of this accident.

(Total: 25 marks)

…continued

QUESTION 3

(a) In contrast to the loss of future dependency and loss of future earnings, the assessment for permanent future nursing care/medical expenses has been left to fend itself by the legislators; allowing discretion of the Courts to apply an assortment of methods to calculate the years' purchase for loss of future permanent nursing care costs.

In light to the above, and by referring to relevant provisions and case law, discuss the approaches used by Malaysian courts in relation to assessment for permanent future nursing care/medical expenses under personal injury claims.

(10 marks)

(b) "The test for support is the direct benefit to the claimant, not vicarious, but the claimant need not prove he was dependant on the financial support. A requirement that a claimant must be dependent on the support from a deceased will not be giving the natural meaning to plain and ordinary words in s. 7(3). The finding by the learned Judge that the loss of support was not proved as the appellant was not dependant on the deceased could not be supported as the appellant's direct benefit from the RM700, as a member of that family was never considered."

Jeffrey Tan JC in *Muhammad bin Hashim v Teow Teik Chai [1996] 1 CLJ 615*

In light to the above, and by referring to relevant provisions and case law, discuss the latest position of Malaysian law in relation to eligible person for an award for loss of actual support under fatal injury claims.

(15 marks)

(Total: 25 marks)

…continued

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B

QUESTION 4A

As an executor for Natsu's estate, Gray applied and obtained a letter of representation. He started to administer the estate by paying a few outstanding debts. A year later, before he completed the administration of Natsu's estate, Gray met with an accident and died.

Gray died in December 2019 without leaving a Will. His parents and grandparents have predeceased him. He is not married and only Jellal, his brother and Lucy, his aunty survived him. Gray owed a certain amount of money to Orga. Upon being informed of Gray's death, Orga had entered a Caveat against any application for a letter of representation.

(*the parties above are non-Muslims unless stated otherwise)

(a) Solve the following issues. Support your answer with reasons and authorities.

(i) What is the type of letter of representation to be applied by Natsu's beneficiaries as a result of Gray's death?

(7 marks)

(ii) Who is entitled to apply for a letter of representation in relation to Gray's estate if Jellal had migrated to Australia?

(5 marks)

(iii) Can Orga enter a Caveat and how can Jellal set it aside?

(4 marks)

(b) A month after the letter of representation was extracted, Lucy found out that there is a will left by Gray. She requested for your advice.

Illustrate the proper action to be taken by Lucy and the mode of commencement of that action in court.

(9 marks)

(Total: 25 marks)

…continued

QUESTION 4B

Carla had executed a Will in July 2000. Below is an excerpt of the Will.

> I give the following:
> (a) my painting and set of jewellery to my niece, Juvia;
> (b) all my personal chattels not bequeathed by this my Will together with any of the specific legacies in which shall fail for any reason to my brother, Naruto.
>
> I give the remainder of my estate to my parent absolutely.
>
> My father, Makarov will carry out all my wishes.

Carla died in July 2018 due to dengue fever. Carla's mother, uncles, aunts, nieces, and grandparents all had predeceased her. Only Naruto had survived her.

Carla's father, Makarov died in November 2018 after he obtained the letter of representation. Makarov left a will and had appointed his only brother, Laxus as the executor of his estate. Makarov died leaving a car worth RM20,000 and a land worth RM100,000.

(*the parties are non-Muslims unless stated otherwise)

(a) Solve the following issues. Support your answer with reasons and authorities.

(i) Who will be the personal representative of Carla's estate and what is the type of letter of representation to be applied by that person?

(7 marks)

(ii) Where should Laxus filed his application for a letter of representation in relation to Makarov's estate?

(4 marks)

(iii) Laxus had disposed Makarov's land to settle the deceased's debt. He did this without consent of the court and the beneficiaries.

(7 marks)

(b) Naruto wishes to know how Carla's estate will be distributed. Present your findings to Naruto. (8 marks)

(Total: 25 marks)

End of page.